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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/787,452	07/13/2001	Scott William Capeci	7628/DQ	2162

27752 7590 07/30/2003

THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION
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EXAMINER

BOYER, CHARLES I

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 07/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/787,452

Applicant(s)
Capeci et al

Examiner
Charles Boyer

Art Unit
1751



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on May 14, 2003
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3-10, and 12 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3-10, and 12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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DETAILED ACTION

This action is responsive to applicants' amendment and response received May 14, 2003.

Claims 1, 3-10, and 12 are currently pending.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claim 1 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claim 1 refers to a detergent composition which is defined only in terms of dimensionless numbers such as homogeneity number, circularity, and aspect ratios. There is no other guidance given to the reader as to how to make this invention. It is possible that every granular detergent composition known will have numbers within the presently claimed range. It is also possible that none of them will. One of ordinary skill in the art would have to test each and every detergent composition using the method for determining these numbers taught by applicants before they are assured they have a composition according to the present claims. This is an undue experimentation burden on one of ordinary skill wishing to make applicants' invention.

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3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrases "less than about" and "greater than about" in claim 1 renders the claim vague and indefinite. These phrases render the claim indefinite, since one of ordinary skill in the art would not be able to ascertain the metes and bounds of these phrases. It is unclear what values are encompassed by these phrases. The examiner suggests that this phrase should be changed to either "greater than" or "about". "Claims reciting "greater than about" are invalid for indefiniteness where there was close prior art and there was nothing in the specification, prosecution history, or the prior art to provide any indication as to what range of specific activity is covered by the term about." See MPEP 2173.05(b). Appropriate correction and/or clarification is required.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1, 3-10, and 12 remain rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Heinzman et al, WO 98/35004 for the reasons of record set forth in paper #6.

Applicants have traversed this rejection on the grounds that no teaching of particle geometry with respect to homogeneity number, circularity, and aspect ratios is contained in Heinzman et al. This fact is acknowledged by the examiner, however, the examiner maintains that the granular detergents of the reference inherently possess these values within the presently claimed range. Applicants have not demonstrated that they do not. The examiner notes that a homogeneous detergent mixture that is formed into granules will necessarily have a homogeneity number of one, which reads on the "greater than about one" limitation of the present claims. The examiner acknowledges that many granular detergents have agglomerate, spray dried, and dried or sprayed-on additive components, which could result in different concentrations of surfactant in the granule, and so the granule would have a homogeneity number not equal to one. However, given the broad range of values for the homogeneity number presently claimed, the examiner maintains that many of these granules will inherently have homogeneity numbers within

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applicants' range, and so the burden is on applicants to demonstrate that they do not. The examiner recognizes that for applicants to test all these compositions to determine their homogeneity number represents a daunting task, which only serves to underscore the examiner's lack of enablement rejection set forth above. Absent evidence from applicants that their particle geometry parameters are not inherently met by the reference, the rejection is maintained.

8. Claims 1, 3-10, and 12 remain rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Dinniwell et al, US 5,569,645 for the reasons of record set forth in paper #6.

Applicants have traversed this rejection on the grounds that no teaching of particle geometry with respect to homogeneity number, circularity, and aspect ratios is contained in Dinniwell et al. This fact is acknowledged by the examiner, however, the examiner maintains that the granular detergents of the reference inherently possess these values within the presently claimed range. Applicants have not demonstrated that they do not. Absent evidence from applicants that their particle geometry parameters are not inherently met by the reference, the rejection is maintained.

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Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles Boyer whose telephone number is (703) 308-2524. The examiner can normally be reached on Monday-Friday from 9:30 AM - 6:00 PM.

If reasonable attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta, can be reached on (703) 308-4708. The fax phone number for this Group is (703) 872-9310 for non-after-final amendments and (703) 872-9311 for after-final amendments.

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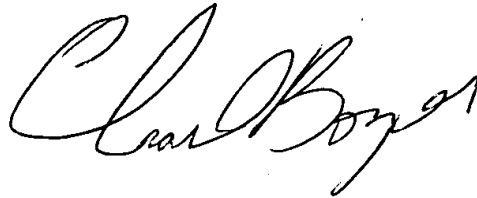
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Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0661.

Charles Boyer

July 27, 2003

A handwritten signature in cursive script, reading "Charles Boyer". The signature is written in dark ink and is positioned to the right of the typed name and date.